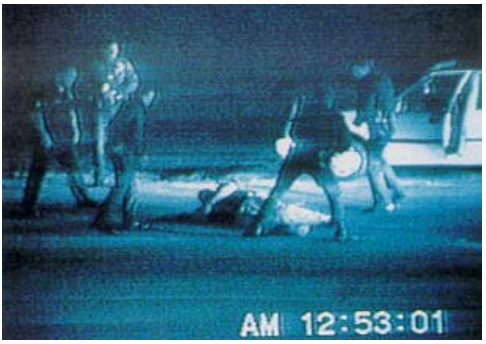
No. 05-1431

In The
Supreme Court of the United States

WHY YOU HAVE NO CIVIL RIGHTS
and



WHAT YOU CAN DO ABOUT IT

WHY YOU HAVE NO CIVIL RIGHTS
and
WHAT YOU CAN DO ABOUT IT

In the year 1800, American people were fed up with out-of-control judges. Back then, voters understood that elected representatives were supposed to protect them from judicial misbehavior. Thomas Jefferson certainly understood. His contemporaries refused to clean up the mess and the people voted them out of office. Jefferson won the presidential election in a landside.

Those days are gone. These days, judicial dishonesty is institutionalized.

Dishonesty is the enemy of justice. What can we do to bring fairness back into our courtrooms? The same thing people did in 1800. Remove the incumbents in Congress who refuse to clean house – and in this case, that means all 535 of them.

Americans today seem to have forgotten that we have the same power voters had in 1800. Our representatives tell us, "We can't remove judges; that would violate the Constitutional principle of *separation of powers*." Where did they get that idea? Those words appear *nowhere* in the United States Constitution.

Our representatives do have the power. *Our* job is to make them do *their* job. If the people can't remove bad judges directly, we need to remove the people who can, but won't.

Let those who want to *keep* their job, *do* their job, which is to protect their constituents from corrupt, self-serving, activist judges. Let them know that our way of life is at stake.

In this next election, cast a blanket vote against every sitting incumbent. Eventually, the message will get through.

IT ALL COMES BACK TO
We the People

About the Cover

Rodney King was savagely beaten by L.A. police officers who apparently never expected to be held accountable for their actions. Unfortunately for them, their criminal actions were captured on videotape and their brutality became national news.

Unfortunately for us, similar "hard" evidence of criminal acts by police, judges, lawyers, and prosecutors is rare. Proving abuse is tough. It is almost impossible to get anyone to hear the defendant's side of the story, *especially* when the abuse is subtle, and comes at the hand of a judge or prosecutor.

The tool to remove dishonest judges has been taken away from us. That tool is called the Federal Grand Jury.

The time has come to take it back.

WHAT IS A GRAND JURY?

Members of the federal grand jury are not prosecutors or law enforcement officers. They are ordinary citizens just like you, chosen at random from the community. There is only one difference between a grand jury and a trial jury. Grand juries don't hear trials. Their sole purpose is to investigate federal crimes (including civil rights violations) committed against you. That's all they do. If they decide there is enough evidence to go

forward with a trial, they will issue an indictment, which is like an arrest warrant. Once that is done, they're finished. Trial jurors take over and hear the case.

When someone commits a crime against you, the prosecutor and judge are supposed to work together to help. Suppose for a moment that the person who breaks the law and violates your rights is the judge or the prosecutor? Where can you turn for help? Certainly not to the judge or prosecutor. The instant you complain to either one about the other, you become their common enemy. They will do everything in their power to bury you *and* your complaint, whether legal or illegal.

That scenario is the heart of Mr. Kathrein's (pronounced Kath'-rine) Petition to the Supreme Court – see ***Petition for Writ***, second half of this booklet. Kathrein is not a lawyer. He is an ordinary citizen trying to protect himself and his family.

KATHREIN'S COMPLAINT
is
EVERYONE'S COMPLAINT

This booklet explains why you should care about Kathrein's struggle. As long as the courts and prosecutors continue to block our right of unfiltered access to a grand jury, they win. As you will read here, when they win, we lose. We lose our lives, our liberty and our property.

Theoretically, judges and prosecutors are no better than or different from any other people. They are certainly not above the law...or are they?

Put yourself into Kathrein's situation for a minute.

Imagine you are in the middle of an ordinary legal claim arising from a personal injury, contract dispute, bankruptcy or

divorce. If your opponent's case is weak, an unspoken doctrine that insiders know as "*reasonable* dishonesty" comes into play. An unethical opposing counsel will introduce inflammatory or prejudicial material against you that has nothing *whatsoever* to do with the case. They do this for the singular purpose of prejudicing the judge. A judge will believe a prosecutor before he believes a stranger, especially if that stranger is a non-lawyer. This tactic can be spectacularly effective.

If yours is a criminal case, the prosecutor can "stack the charges" against you or withhold evidence in your favor. He can lie outright or cut a deal with a "flexible" informant. Eventually, the judge simply "decides" that the prosecutor "deserves" to win or that you "deserve" to lose. The complexion of the contest changes from a battle of facts and law to a demonstration of superiority. Once that happens, the game is over. You will be rolling down the rail of certain defeat.

That leaves you three choices: (1) Give up, (2) Appeal, or (3) Fight back.

If you choose number one, stop reading now. Pass this booklet along to someone else.

If you choose number two, you might as well choose number one. On appeal, the presumption of a "fair" trial always lies with the winner in the lower court. It is almost impossible to reverse a lower court judgment by alleging abuse of discretion, abuse of process, prejudice, or procedural error.

Number three is your *only* choice. When the judge attacks you personally, you *must* defend yourself right then and there. It is far better to fight while you are in the ring, than to try to overturn the decision after the bell.

Could you go to your lawyer or public defender for help? Yes and no. *Yes*, because their job is to defend you vigorously,

but *no* because they would never "pick a fight" within their own (legal) community. Lawyers are not trained that way and they don't think that way. Their culture vilifies traitors.

If an attorney even *attempts* to sue a judge or prosecutor, he risks his license, his friendships, his inside connections and his livelihood. If he is part of a law firm, his partners will forbid it. Turning on one of your own is a betrayal of the most unforgivable kind. A good lawyer will fight against *anyone* for you, even the police, but he will **not** bite the hand that feeds him. He could count on losing not only your case, but every case after that for the rest of his doomed career. Your lawyer is more likely to feign gratuitous indignation, then slip backwards out of the room.

Remember…defenders do not actually "lose" cases, their clients do. While you are broke or in prison or both, your lawyer is busy collecting judgments (fees) against you.

Yours is the "hit and run" that will NOT be investigated.

Assuming you are not the type of person who will lie down and take a "Rodney King beating," your only hope for fairness is to fire your lawyer and sue the offending judge or prosecutor yourself. (A person representing himself is said to be acting *pro se*.)

That is what happened to Kathrein, and that is what Kathrein did. He sued them all…the *first* judge and the *second* judge, then the lawyers *and* their law firm. The harder he fought to report the judicial crimes committed against him, the more they gang-beat him, each one supporting the others.

Now he comes to his last stop– the Supreme Court of the United States. (More accurately, his last "judicial" stop.) If the Supreme Court refuses to answer his question, Kathrein will press for a solution from Congress.

THIS COULD NEVER HAPPEN TO ME

Why should you care about an obscure lawsuit, by a person you do not know, who is in a situation you (think you) will never be in? What possible difference could it make in your life?

These are fair questions.

Imagine one day you or someone you love, find yourself in Kathrein's place. When that dark day comes, (which it eventually does for everyone) doesn't it make sense to work now to ensure a fair hearing then?

Let's start with this.

Until three years ago, Kathrein truly believed courtrooms were places where judges carefully listened to the facts and honestly decided the cases. Then he got the lesson of his life. The judges in his case could, and did, cheat. The lawyers could, and did, cheat. And once they coordinated their cheating, no fact, law, or procedure could save him.[1] He was *set up* to lose.

Kathrein has already taken his beating and has little left to gain for himself. He is moving this fight forward because the argument is too important and far-reaching to ignore. Men are defined by what they stand up against. Taking back for everyman, what has been taken away from everyman, is well worth the effort and sacrifice.

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[1] To be fair, many judges, prosecutors, and lawyers work hard to be honest. Unfortunately, they are only honest *most* of the time. But if this case was *your* case, most of the time would not be good enough. You still got cheated. Your right to a fair trial does not go away just because nine out of ten people *did* get one. Justice cannot tolerate exceptions. Just like a cop, a priest, or a bank teller, if they cross the line **once**, they have to go.

Federal judges and federal prosecutors routinely block the access common citizens are *supposed* to have to the federal grand jury. There is a logical but not legal, reason for this. If you have ever been dragged through the courthouse cattle chute, you will understand that "equity" and "justice" have *nothing* to do with the process. Judges are *determined* to make things turn out the way they want them to and prosecutors are *determined* to get convictions. In many ways, equity, justice, facts and law, actually *interfere* with the process.

Have you ever stopped to consider that public defenders (the poor man's lawyer) don't *investigate* anything? Public defenders do *not* have police or detective resources at their disposal…only prosecutors do.[2] Your defense will rely almost entirely upon the evidence the prosecutor decides to "share" with your lawyer. If the prosecutor "forgets" or "loses" evidence that would help your case, or decides to ignore an important lead, he will win and you will lose.

That is not merely misbehavior, that is criminal behavior. The very last thing a judge wants is a properly operating grand jury. What judge *wouldn't* want the power to block access to a grand jury – especially if that grand jury was about to investigate *him*? Judges and prosecutors have total control over the grand jury. They took it from us and they gave it to themselves, and they use it to protect themselves all the time.

This type of abuse is exactly why our forefathers granted ordinary citizens the right to access the grand jury **directly**. It was a system of checks and balances installed to protect against judicial tyranny.

Direct access to a grand jury is the victim's path *around* the victimizer's roadblock.

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[2] For a fine example of prosecutorial corruption, read *George Jones v. City of Chicago*, 856 F. 2d 985 (7th Cir. 1988).

That is why it's such a BIG secret and that is why Kathrein has taken such a steady beating – he understands what judges are doing and refuses to let them get away with it.

HOW THE GRAND JURY (should) PROTECT OUR CIVIL RIGHTS

The second half of this book is a copy of Kathrein's Petition for a Writ of Certiorari. A Writ of Certiorari is a request to the Supreme Court of the United States asking for permission to bring a case before them. If the writ is granted, the petitioner may then ask the Supreme Court to either agree with the lower court's decision or tell the lower court it was wrong, and why.

In Kathrein's Petition you will see a perfect example of justice thwarted by the very people (judges and the U.S. Attorney) who are supposed to ensure that justice is done.

An attorney would never bring Kathrein's complaint to court. It could *only* come from a pro se litigant – someone who does not have a Bar card to lose. If Kathrein prevails, the floodgates of accountability open. Bad judges and prosecutors will be in the same boat the Los Angeles police were in after they were caught (unable to deny) beating Rodney King – they would have to answer for their crimes.

When we regain direct access to the grand jury, bad judges and prosecutors will run for cover. If they have to give this power back, they will have to answer. We the People win.

Everything will change.

What exactly, does it mean when we say "Civil Rights?"

> **Civil right.** (*usu. pl.*) **1.** The individual rights of personal liberty guaranteed by the Bill of Rights and

> by the 13th, 14th, 15th, and 19th Amendments, as well as by legislation such as the Voting Rights Act. Civil rights include esp. the right to vote, the right of due process, and the right of equal protection under the law. **2.** CIVIL LIBERTY.
>
> **Civil Rights Act.** One of several federal statutes enacted after the Civil War (1861-1865) and, much later, during and after the civil-rights movement of the 1950s and 1960s, and intended to implement and give further force to the basic rights guaranteed by the Constitution, and esp. prohibiting discrimination in employment and education on the basis of race, sex, religion, color, or age.
>
> *Black's Law Dictionary*, p. 240 (7th Ed.).

While such words seem majestic on paper, in real life you have *no* civil rights. They are not tangible "things" that follow you wherever you go. The rights granted to American citizens in our Constitution are [in effect] merely licensed to us by judges.

What does that mean? Let's examine two simplified scenarios.

Suppose your civil rights are challenged by a third party, *i.e.*, the police, your neighbor or City Hall. (Every right we have is merely an extension of a *civil* right.)

If you have been accused of a harmful civil action or a crime, the Constitution and various statutes provides certain *defensive* protections, beginning with the presumption that you are innocent until proven guilty.

Or, suppose you attempt to exercise a guaranteed right such as freedom of speech or religion but someone prevents you from doing so. Again, the Constitution and various statutes provide

certain *offensive* protections, beginning with the opportunity to redress your grievances (file a lawsuit).

In either event however, you have no means to enjoy or enforce those rights *except* through the court system. What that really means is that without a mechanism for remedy, (the court) you have no rights. If a judge refuses to order relief, you don't get any. Therefore, citizens have no choice but to (literally) pray to a judge for leave to assert their rights. Where their prayers are blocked, their rights are denied.

It wasn't always like this. Judges have taken control of the "right" to assert your guaranteed rights, *i.e.*, they are no longer in-alienable. You have them *only* when a judge feels like letting you have them. If he doesn't, you don't. There is *nothing* you can do.

Judges "dispense" civil rights at will.

Here is what you probably *do* know: No citizen can bring criminal charges against another citizen, regardless of their position or influence. Only the law enforcement personnel can do that, *i.e.*, police (through the state's attorney), FBI agents, federal prosecutors, etc.

Here is what you probably do *not* know: Citizens *do* have the right to bring their *evidence* directly to a grand jury and request that they *investigate* criminal acts against them – not prosecute…*investigate*. This right is guaranteed to you by the Constitution, federal statutes, and common law. If the grand jury decides to indict, a prosecutor will take over and handle your case. Kathrein proves this in his Petition. The courts once recognized this right. Now they do not. And as Kathrein has learned, those who dare to remember, get punished.

Why don't you know this?

Because the judiciary does not *want* you to know.

And why don't they want you to know? Because to allow a common citizen direct access to the federal grand jury is to expose their Achilles heel. Judges may be immune from prosecution for civil misbehavior, but they are NOT immune from prosecution for criminal behavior.

The only way to make a judge answer for his criminal behavior is to bring criminal charges against him.

However, as explained above, no citizen can bring criminal charges against another citizen. Under present "case law" the only way a citizen can bring criminal charges against a judge is if another judge allows it (via access to the grand jury).

After the American Revolution, our Constitution was conceived and adopted as the mechanical foundation of our government. For ordinary citizens, the *independent* grand jury was the *only* tool of salvation from judicial corruption. Without this tool, American civil rights are damned.

Judges simply snatched this redress away. They did it by enacting "judicial legislation," *i.e.*, by "ruling" to block public access to the grand jury. Who decided, "What will be the law?" Judges did. Who is *supposed* to decide, "What will be the law?" Congress is.

The entire judicial branch of our government placed itself out of reach, behind the back of Congress. Judges are now, **above the law.**

It is no longer possible to get a complaint *against* a judge *past* a judge.

If you *do* try, (as Kathrein did) the judge will characterize your complaint as frivolous. He will treat you as if you are

unstable and even a little dangerous. Your case will be dismissed swiftly by application of the powerful tools at their discretion, including the mother of all tools — "*judicial discretion*." And before they send you out the door (or off to jail) they will slap you with sanctions and penalties (or a few extra years if it's a criminal case) for having the audacity to challenge their infallibility.

The more Kathrein pressed for his right to bring the evidence of crimes committed against him to an independent federal grand jury, the more they kicked him, *i.e.*, he got the Rodney King treatment. It is not hard to guess where Rodney King would be today if not for that videotape.

Kathrein's evidence may not be on video, but it *is* on paper.

Two citations sum up the entire problem.

> Ultimately, the guarantee of [our] rights is no stronger than the integrity and fairness of the judge to whom the trial is entrusted.
>
> > *Bracy v. Gramley*, 81 F.3d 684, 703 (7th Cir. 1996) (dissent), *reversed*, 520 U.S. 899, 117 S.Ct. 1793 (1997).
> >
> > A passive judiciary merely ratifies the status quo; instead of acting as a bulwark against undue political power, it becomes an actor in concert with the political branches against the individual.
> >
> > Bandes, *Reinventing Bivens: The Self-Executing Constitution*, 68 So.Cal.L.Rev. 289, 317 (Jan. 1995).

Until the individuals (our elected representatives) who are responsible for ignoring judicial abuse are disciplined and/or replaced, nothing will improve.

Civil rights are not self-executing…we will either save them together or lose them together.

☑ IF YOU ARE CALLED FOR GRAND JURY DUTY

During "orientation" grand jurors are groomed to become a part of the judicial process "team." In part, that function is appropriate – but your part need not be passive. A critical role of the grand jury is to be a buffer against judicial or prosecutorial corruption.

Grand jurors must remember that they are an essential but *independent* cog in the *greater* mechanism of checks and balances.

As a grand jury member you have the right (and the duty) to present this question to the prosecutor: "All you've brought us are complaints by government agents. Where are the complaints from our fellow citizens that we need to investigate?"

Kathrein's case is a perfect example of a criminal complaint filed by a fellow citizen that the judge and prosecutor will never let you see…because it is against members of their own community.

If you and your fellow jurors *insist* on an answer, you will become what judges and prosecutors disparagingly characterize as a "runaway grand jury." To the rest of us, you are simply a grand jury *doing its job*.

For an example of a strong grand jury, read about the Rocky Flats Grand Jury. The published decision is *In re Grand Jury Proceedings*, 813 F.Supp. 1451 (D. Col. 1992).

THE RIGHT TO FAIR TRIAL
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WHERE DID IT COME FROM
and
WHERE DID IT GO?

Let's review our civil rights history.

Timeline

1676.	First American War for Independence, Bacon's Rebellion. Nathaniel Bacon led an armed uprising of white indentured servants and black slaves. Of the last 100 men who refused to surrender, 80 were black.
1776.	American Declaration of Independence. Grants no rights to blacks, Indians, or women.
1783.	Colonies win their War of Independence from England.
1791.	Bill of Rights is enacted.
1861.	Civil War Between the States.
1863.	Lincoln issues the Emancipation Proclamation.
1865.	On April 14, 1865 Abraham Lincoln pays for his championship of the Union and emancipation.
1866-1871.	Congress enacts a series of federal civil rights statutes.
1868.	The Fourteenth Amendment is ratified.

AMENDMENT XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The civil rights statutes of today are found in Title 42 of the United States Code, Public Health and Welfare. The civil rights statute used most often is 42 U.S.C. § 1983, which was designed to allow those who were mistreated by those administering state law to file suit against them in federal court.

Title 42 U.S.C. § 1983, under different statute numbers, was originally enacted to protect not only freed slaves, but Union soldiers mistreated by Southern courts, in 1871, as a mechanism for enforcing the Fourteenth Amendment.

Earlier statutes had been enacted to enforce the Thirteenth Amendment. For example, 42 U.S.C. § 1982 first appeared as section 1 of the Civil Rights Act of 1866, which provided:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The United States Supreme Court slowly began to dismantle the civil rights legislation enacted by Congress, starting with a case titled *Bradley v. Fisher*, 13 Wall. 335. 163 U.S. 537 (1872).

That case held that state judges could not be sued in federal court for their misbehavior because they had "sovereign judicial immunity," though none of those words appear in the Constitution or in any of the civil rights statutes originally enacted by Congress.

Plessy v. Ferguson, 163 U.S. 537 (1896) eviscerated those laws still further in upholding segregated passenger trains.

1954. Rosa Parks leads the bus strike in Montgomery, Alabama and the Supreme Court decides *Brown v. The Board of Education*, 347 U.S. 483.

1963. Excerpt from Dr Martin Luther King's "I have a dream" speech:

> I have a dream that one day this nation will rise up and live out the true meaning of its creed: "We hold these truths to be self-evident: that all men are created equal." I have a dream that one day on the red hills of Georgia the sons of former slaves and the sons of former slave owners will be able to sit down together at a table of brotherhood. I have a dream that one day even the state of Mississippi, a desert state, sweltering with the heat of injustice and oppression, will be transformed into an oasis of freedom and justice.

Obviously, America has not become an "oasis of freedom and justice." When Dr. King gave his speech, less than 240,000 people were behind bars. Today, prisons house over 2.3 million Americans. As a percentage of the total population, there are nine (9) times as many blacks incarcerated as whites. (U.S. Department of Justice, *Bureau of Justice Statistics*, 2004).

1964. Civil Rights Act (1964). This act signed into law by President Lyndon Johnson on July 2, 1964, prohibited discrimination in public places, provided for the integration of schools and other public facilities, and made employment discrimination illegal. This document was the most sweeping civil rights legislation since Reconstruction.

1965. Congress passed the Voting Rights Act of 1965 on August 10, making it easier for Southern blacks to register to vote. Literacy tests, poll taxes, and other such requirements that were used to restrict black voting were made illegal.

In *Reynolds v. United States*, 98 U.S. 145 (1879), the Supreme Court held that a potential juror could not be asked embarrassing questions such as, "Have you ever been convicted of a felony?" The Voting Rights Act kept this barrier intact.

Congress then enacted the juror qualification act prohibiting convicted felons from jury duty. 28 U.S.C. § 1865.

As civil rights columnist Barbara Rowland pointed out some time ago, at the present rate of incarceration, by the year 2010 every black male between the ages of 18 and 40 will be (or will have been) under some type of judicial supervision.

In many states, convicted felons can't vote. This means that by 2010 black males will be right back where they were in 1963. They will not be able to participate in the justice system *or* vote. Two of the three branches of our government (executive and judicial) are slowly closing the door to black males. Blacks are being made into *non*-citizens. Discrimination used to come from the bottom up. Now it comes from the top down. Either way, it is still discrimination.

1968. On April 4, 1968 (Memphis, Tennessee) Martin Luther King pays for his championship of civil rights.

In less than a hundred years, the percentage of lawsuits that make it *past* the judge and *to* the jury has dwindled from nearly one hundred percent to less than two percent. Even if you demand a jury trial and pay the jury fee, the chance that a judge will allow you to exercise your right to a jury trial is extremely small. With little more than his unmitigated power, a judge can simply deny your jury trial and decide your case himself…*his* way. The lucky two percent who are blessed with a jury are usually wealthy or powerful, or have managed to receive wide media attention. That tiny "two percent" permit the judiciary to sustain the illusion that liberty and justice is for all.

SOME BACKGROUND ON JUDICIAL AND PROSECUTORIAL IMMUNITY

In *Pierson v. Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), the Supreme Court held that judges are immune from liability for damages in suits under 42 U.S.C. § 1983. *I.e.*, this was *Bradley v. Fisher* all over again. What had been cast in stone, was re-cast in steel. In his strongly worded dissent, Justice William O. Douglas stated, "it does not say 'any person except judges'." Since Congress would not volunteer to give judges total immunity, they just gave it to themselves. By that ruling, the court had just enacted a "judicial" law. Apparently judiciary interest is superior to the public interest.

Title 42 U.S.C. § 1983 "on its face does not provide for *any* immunities." *Heck v. Humphrey*, 114 S.Ct. 2364, 2375-76 n. 1 (1994).

In other words, what good is the Civil Rights Act (1964)

"the most sweeping civil rights legislation since Reconstruction" if a judge who ignores the Act, and who denies our rights, is not held accountable? Where is the incentive for him to behave?

Under Title 18 U. S. C. § 242, Congress provides that judges are liable for criminal acts committed under "color of law." The U.S. Attorney can charge a judge under this statute, but it is extremely rare and happens only when the behavior is so gross and obvious that it cannot be hidden.

That statute reads:

> 18 U.S.C. § 242. Deprivation of rights under color of law. Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

When you think of a "corrupt" judge, you think of one who trades rulings for cash. As far as we know, that risky sort of corruption is rare. You must appreciate however, that corruption takes many subtle but equally destructive forms. A dishonest judge can ignore evidence, twist procedure, obstruct the record, retaliate, manufacture facts and ignore others, dismiss valid claims, suborn perjury, mischaracterize pleadings, engage in ex parte communication and misapply the law. When he does these things intentionally, he commits a crime. Petty or grand, the acts are *still* crimes. It takes surprisingly little to "throw" a case.

The U.S. Attorney will *never* pursue a judge under § 242 for these offenses. Judges know they will *never* have to answer for this type of crime. They are immune, not by law, but by "judicial legislation" and professional courtesy. Judges violate § 242 *all day long*. This sort of criminal activity is so systemic, that many "bad" judges are incapable of recognizing their own misbehavior or the misbehavior of their brethren. As President Bush said, "We must make no distinction between terrorists, and those who harbor terrorists."

The ultimate problem here is that the *only* way to get relief against a judge is to ask a judge for permission to sue a judge. As noted above, that *never* happens. As long as the subjects of the investigation are the gatekeepers of the investigation, there will *be* no investigation. Therefore, 18 U. S. C. § 242 is meaningless.

If Kathrein cannot win this fight to bring evidence of judicial misbehavior *directly* to a grand jury, then all Americans who are victims of § 242 crimes are denied their civil rights.

Judges argue that America cannot endure a judiciary that is subject to political pressures. Their constant refrain is "Independence!" and "Freedom from retaliation!" What they *really* want is, "Independence from *accountability*" and "Freedom *to* retaliate." We cannot allow the judiciary to spin

accountability as "political pressure." Ultimately, it is the people who need protection from bad judges, not the other way around, (and the people will always praise a judge who obeys the rules).

Read sections 1 and 2 of Article III of the U.S. Constitution *very* carefully. Congress is authorized to make rules for the Supreme Court and create (and by implication, *dissolve*) the lower courts.

> Section 1: The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.
>
> Section 2, Clause 2: In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

If Congress can make rules for the Supreme Court, then the Supreme Court is **not** "independent" of Congress. Congress is the *master* of the courts. The Supreme Court cannot "rule" away the power of Congress and it cannot "rule" away its duty to put the people's interests ahead of its own.

Judges are supposed to be our public servants. If they disobey Congress, Congress has the right and the power to make them answer for it. **We the People** used to have this power. We

don't anymore because our public servants "decided" to take it away from us. In our trust and ignorance, we let them do it.

A citizen's right of access to an independent grand jury is our only hope of restoring honesty and fair play in the court system. Self-serving judges took that right away from us, and Kathrein seeks to take it back.

Dishonest judges have turned Dr. King's *dream* into Dr. King's *mirage*.

WHAT YOUR CONGRESSMAN CAN (and should) DO

If enough members of Congress follow the example of Thomas Jefferson, we can clean up this mess.

All we need are a few simple amendments to 42 U.S.C. § 1983 and the Federal Rules of Civil Procedure.

The Bible offers a foundation to support the changes we need.

> Ye shall do no unrighteousness in judgment: thou shalt not respect the person of the poor, nor honor the person of the mighty: but in righteousness shalt thou judge thy neighbour.
>
> Leviticus 19:15 (King James Version).

In other words, "Be fair, no matter who is on trial – don't favor either the poor or the rich." Leviticus 19:15

(Contemporary English Version).

> And I charged your judges at that time, saying, Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.
>
> Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's: and the cause that is too hard for you, bring it unto me, and I will hear it.
>
> Deuteronomy 1:16-17 (King James Version).

In other words, "When you settle legal cases, your decisions must be fair. It shouldn't matter whether the dispute is between two Israelites, or between an Israelite and a foreigner living in your community. And it shouldn't matter if one is helpless and the other is powerful. Don't be afraid. No matter who shows up in your court, God will help you make a fair decision. If any case is too hard for you, bring the people to me, and I will make the decision." Deuteronomy 1:16-17

(Contemporary English Version).

The oath of office taken by every federal judge, is derived from those two passages.

> 28 U.S.C. § 453. Oaths of justices and judges
>
> Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of this office: "I, _ _ _ , do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _ _ _ under the Constitution and laws of the United States. So help me God."

When you read Kathrein's Petition for Certiorari you will see that the judges in his case ignored their oath, especially the section swearing to impartial judgment.

The Civil Rules of Procedure are the rules everybody is supposed to follow while their case is in the court. When a judge refuses to follow the rules, there is almost nothing you can do.

It's tolerable to lose a case fair and square. It's infuriating to get cheated. It's awful to have no explanation. It's discouraging to know that the guy in line behind you is going to be thrown into the pit on top of you. And it is unforgivable that the ones who intentionally rob you of your Constitutional right to a fair hearing should be immune from their criminal acts.

A MESSAGE TO CONGRESS: MAKE THE RULES OF THE GAME FAIR

1. TITLE 42 U.S.C. § 1983

The civil rights statutes of today are found in Title 42 of the United States Code, Public Health and Welfare. The civil rights statute used the most is 42 U.S.C. § 1983, which was designed to allow those who were mistreated by those administering state law to file a lawsuit in federal court.

Title 42 U.S.C. § 1983, under different statute numbers, was originally enacted in 1871 as a mechanism for enforcing the Fourteenth Amendment to protect freed slaves and Union soldiers mistreated by Southern courts (judges).

The current statute reads as follows (note the italics):

> § 1983. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or

> Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, *except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable*. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

In 1996 Congress added a phrase to 42 U.S.C. § 1983, *"except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable."*

We could end judicial evasion and erosion of our civil rights if Congress replaced that phrase at the end of § 1983 with this sentence:

"*No judicially created abstention, comity, immunity or other doctrine may be applied by the courts which might foreclose, impede, or otherwise obstruct a federal civil rights complaint*."

2. RULE 52. FINDINGS BY THE COURT; JUDGMENT ON PARTIAL FINDINGS

All cases consist of three parts: facts (what happened), law (statutes enacted by the legislature or prior rulings on similar

cases), and procedure (operating rules).

A basketful of judicial "doctrines" such as "abstention" and "comity" allow the judge to throw out your complaint almost immediately. The "prosecutorial immunity" doctrine allows a prosecutor to manufacture evidence or false testimony that could send you to prison for life. Even if you have solid evidence to prove he was corrupt, the law will not allow you to sue him. Therefore, if you are a prosecutor, a crime is not a crime, *i.e.*, prosecutors are also above the law.

As discussed earlier, it is common for judges to simply ignore, manufacture or distort the "facts" of a case in order to support the outcome they desire. If necessary, they will ignore or misinterpret the statutes or laws and, if all else fails, they will employ the most unstoppable tool in their bag – *judicial discretion*. On appeal, it is almost impossible to reverse a judgment by alleging "abuse of discretion." Another "doctrine" states that a reviewing (Appeals Court) court will always "defer" to the judgment of a trial court on "discretionary" matters. Unfortunately, almost *everything* is "discretionary."

Early English courts understood what "discretion" *really* meant.

> "The discretion of a Judge is the law of tyrants: it is always unknown. It is different in different men. It is casual, and depends upon constitution, temper, passion. In the best it is oftentimes caprice; in the worst it is every vice, folly, and passion to which human nature is liable."
>
> Lord Camden, L.C.J., *Case of Hindson and Kersey*, 8 Howell State Trials 57 (1680).

To fix this part of the problem, Congress need only amend Federal Rule of Civil Procedure 52(a), which reads:

> Rule 52. Findings by the Court; Judgment on Partial Findings
>
> (a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. *Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.*

Remove that last sentence in 52(a), which reads:

"*Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule*."

If Congress removed this sentence, judges would be forced to explain their rulings. Whim and prejudice are much harder to conceal if a judge has to explain *why* your rights were denied, and they could no longer rule on pleadings they haven't read.

3. RULE 56: SUMMARY JUDGMENT

Rule 56 is summary judgment. A judge cannot determine the truth of your facts; that job is the sole dominion of the jury. Judges have a little dance they use to get around this technicality. They call it the "Two-Step." *Step One*: The judge arbitrarily decides that there are no "material" facts in dispute. Without facts in dispute, there is nothing for a jury to "decide." Since there is no longer a need for a jury, the judge can process your complaint himself. *Step two*: Case dismissed. Pro se litigants call this practice the "Bum's Rush."

Rule 56 neatly evades the Seventh Amendment, which guarantees your right to a jury trial.

Congress should add the following text to rule 52:

> "*Every judicial decision must be accompanied by a statement of facts and conclusions of law.*
>
> *Every federal judge, law clerk, and staff attorney shall keep time records in six-minute increments on each and every pleading, motion, brief, or other paper submitted in each case they adjudicate and summarize the nature of the work performed.*"

The six-minute rule might sound a little odd but it isn't. Most lawyers bill their clients in six-minute increments. This rule will prevent unethical judges from "processing" three hundred hours worth of caseload in a thirty hour work week.

With the above legislative amendments Federal Rule of Civil Procedure 52 would read as follows:

> Rule 52. Findings by the Court; Judgment on Partial Findings

> (a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Every judicial decision must be accompanied by a statement of facts and conclusions of law. Every federal judge, law clerk, and staff attorney must clock in and clock out, in six-minute increments on each and every pleading, motion, brief, or other paper submitted in each case they administer, work on, or review, and sign off on what they did.

What is the difference between a well-reasoned opinion and one that is arbitrary or retaliatory? Without an explanation, it is impossible to know which kind they gave you. "Due Process" *demands* that a judge give *reasons* for his ruling(s).

> I could stop right here and have no trouble concluding that the judge committed misconduct. It is wrong and highly abusive for a judge to exercise his power without

the normal procedures and trappings of the adversary system-a motion, an opportunity for the other side to respond, a statement of reasons for the decision, reliance on legal authority. These niceties of orderly procedure are not designed merely to ensure fairness to the litigants and a correct application of the law, though they surely serve those purposes as well. More fundamentally, they lend legitimacy to the judicial process by ensuring that judicial action is-and is seen to be-based on law, not the judge's caprice. The district judge surely had the power to enjoin enforcement of the state-court eviction judgment once he assumed jurisdiction over the bankruptcy case, but he could legitimately exercise that power only if he had sufficient legal cause to do so. Here, the judge gave no indication of why he did what he did, and stonewalled all the Trust's efforts to find out.

In re Complaint of Judicial Misconduct, 425 F.3d 1179 (9th Cir. 2005) (Kozinski, C.J., dissenting).

RANDOLPH, Circuit Judge: When a district court's ruling on a pretrial motion involves factual issues, Rule 12(e) of the Federal Rules of Criminal Procedure commands the court to "state its essential findings on the record." The rule serves several functions. Findings on the record inform the parties and other interested persons of the grounds of the ruling, add discipline to the process of judicial decision-making and enable appellate courts properly to perform their reviewing function. If the district court not only fails to make "essential findings on the record," but also expresses nothing in the way of legal reasoning, if it simply announces a result, it may frustrate these objectives.

U.S. v. Williams, 951 F.2d 1287 (D.C. Cir. 1991).

Your Congressman will probably not want to be the first one to “rock the boat” by amending § 1983 or Rules 52 and 56. If we make it clear that his job depends on it, he will change his mind in a hurry.

In this last section you will see that blacks and whites are not the only victims of an agenda-orientated legal system.

HARVESTING MEXICANS

The world stands in “shock and awe” at the surgical efficiency of the U.S. Military’s invasion of Iraq. In less than 30 days our armed forces toppled the government of Saddam Hussein and destroyed his army.

A Congress that sent hundreds of thousands of men a third of the way around the world to defeat a nation of 17 million people in 30 days, is the same Congress that cannot seem to stop a leaking border right next door.

This is the same Congress that puts Mexicans in a *U.S. prison* if they are caught trying to cross the border a second time.

This the same Congress that enacted NAFTA, bringing Mexican agricultural products north for higher prices, raising the price poor Mexicans had to pay for food grown in their own country.

Instead of invading Iraq, Congress *could* have put a quarter million armed troops on our border with Mexico. A quarter million men stretched over 1700 miles equals one-armed soldier every 36 feet. (Prison watchtowers are several hundred feet apart.)

Our border with Mexico leaks because Congress *allows* it to leak.

To better understand this contradiction, let us take a brief look at U.S. labor history.

In a wealthy society, the elite do not want to work. They require an underclass of people to do the work for them. This includes menial *and* blue-collar jobs.

In the eighteenth century the elite bought slaves from Africa for these jobs. In 1865, Abe Lincoln and the Union Army eliminated that pool of labor. The need for cheap workers did not just go away. Someone had to replace the slaves.

In one of history's ironies, the wife of Ulysses S. Grant, commander of all the Union forces that freed the slaves, was asked why she hadn't freed her own slaves until 1867. Her answer was, "Good help is so hard to find these days."

After the Civil War the "giants of industry" encouraged foreign immigration to keep the workers flowing – Irish, Poles, Germans, Chinese, Italians, Greeks. Foreigners worked much cheaper than those raised on American soil.

History tells us of the Chinese Exclusion Acts and other laws passed to protect American jobs. For the most part, those laws did not work. They were the equivalent of putting a Band-Aid over a bullet wound. America rocked with labor unrest from 1870 through the beginning of World War II.

Between WWII and the Seventies, American labor unions became powerful enough to neutralize underclass work opportunities. Cheap labor went on hiatus, but the pressure stayed on. If the ruling class could no longer bring slaves or immigrant laborers *in*, they simply shipped the jobs *out*. It was a partial solution.

Shipping jobs out kept costs down and profits up but it couldn't solve the domestic (underclass) shortage. *Somebody* needs to be at the bottom here at home. Undocumented Mexicans have been made the slaves *du jour*.

If judges can keep them afraid, they can keep them "cheap." Judicial intimidation and threats of prison keeps them afraid. The source of cheap labor is sustained by our courts.

COMING FULL CIRCLE

As you read earlier, it is easy for the judiciary to pack our prisons.

There is a surprising but not accidental, by-product of judicial corruption; America, the "land of the free," has 5% of the world's population and 25% of the world's prison population.

A free man once convicted, is a slave for life. Release is *not* freedom.

While they are "in," prisoners are a source of cheap labor. When they get out, they stay cheap forever.

Who wants to hire an ex-con? Most ex-cons are lucky to find jobs as dishwashers or janitors. No one with a "record" is going to get a respectable position. Many federal and state government positions are "off-limits" to convicts by law. A convicted person cannot secure *any* employment at the U. S. Post Office.

Instead of paying 'good' citizens a decent wage, corrupt judges can "process" blacks and Mexicans through the criminal justice system and make them slaves for life.

It's easy to keep undocumented Mexicans and black men at the bottom. Most Mexicans are *not* U. S. citizens and blacks can be easily converted into "non" citizens. Neither group can serve on a jury, go near a ballot box, get a fair trial,[3] serve in the military or find a decent job. (But some *can* be judges.)

An untouchable judiciary keeps the "slave trade" going and more importantly, keeps their voting voices silent.

History repeats itself. Harvesting blacks and Mexicans for slave labor today is the same as importing Africans for slave labor in the first half of the nineteenth century.

Our judicial system is the harvesting machine.

WHAT WE MUST DO – *TODAY*

Our judicial system is not immune from reform.

Read Kathrein's Petition to the U.S. Supreme Court. It is unlikely that the Supreme Court will decide to consider his question without a public outcry. Does the Supreme Court have the courage to make jurists accountable, as our forefathers originally provided? We need to make it loud and clear that members of the Supreme Court do not work for their subordinates, (other judges) they work for their bosses…We the People.

Mr. Kathrein has slim hope that the Supreme Court will face this question. If they refuse, all is not lost.

[3] Many states allow the unfair practice of listing the defendant's previous convictions on his indictment, which the jury then considers for the most recent offense.

Congress has the authority to overrule wrongly decided cases. *Wesson v. United States*, 48 F.3d 894, 901 (5th Cir. 1995).

Should it be necessary, he will press this issue to Congress.

If our representatives in Congress will not make judges answerable to We the People (and NOT to each other) then *we* as a group, must vote *them* as a group, out of office.

When enough current members of Congress start to lose their jobs because they abandon us to the judicial, prosecutorial, and legal players, their replacements *will* listen.

Read Kathrein's Petition. It demands the return of *everyone's* rights. This might be our last and only chance to reclaim them. If the Petition is denied, a golden opportunity is lost.

The Supreme Court might decide whether to hear this Petition sometime in the next month or two, but no later than September 2006.

Together, we must tell Congress to tell the Supreme Court to accept this case.

The time to act is now. Our window of opportunity will close very soon. Tell your friends and neighbors. Call people who can get the message upstairs. If you don't know anyone on the inside, call someone who does, or someone who knows someone who does. Direct them to our website.

Take a few minutes *today* to make this happen.

God bless us all.

To find more information on this subject, go to:
www.judgesabovethelaw.com

To find your elected representative, go to:
www.congress.org

See the back of this booklet for an explanation
of how to read legal citations.

No. 05-1431

In The
Supreme Court of the United States

MICHAEL L. KATHREIN,

Petitioner,

v.

BRIGID M. MCGRATH, *et al.*,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

MICHAEL L. KATHREIN
7601 NORTH EASTLAKE TERRACE
CHICAGO, ILLINOIS 60626
(773) 761-6000
Pro se Petitioner

QUESTIONS PRESENTED

The following questions are presented by the petitioner:

I. Does an American citizen have a Constitutional right to petition the federal grand jury to investigate crimes committed against him?

II. Does an American citizen have a statutory right to petition the federal grand jury to investigate crimes committed against him?

III. Do members of the executive or judicial branches of government have the authority to block access to the grand jury?

PARTIES BELOW

Petitioner Michael L. Kathrein was the plaintiff-appellant in three appeals that were consolidated in the court below. Respondents Brigid M. McGrath, Michael P. Moner, Jeffrey R. Rosenberg, Daniel V. Kinsella, Schuyler, Roche & Zwirner, P.C., and Paddy H. McNamara were defendants-appellees in one case and R. J. Siegel was the defendant-appellee in the other two cases in the court below.

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PETITION FOR WRIT OF CERTIORARI

Michael L. Kathrein, on behalf of himself, hereby petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit, filed on February 7, 2006. There was no good-faith determination of the law in petitioner's consolidated cases in either the district court or in the Seventh Circuit Court of Appeals.

OPINIONS BELOW

The unreported Court of Appeals' Opinion affirming the judgment of the consolidated cases of the district court, entered February 7, 2006, is reproduced at Pet. App. 1. The District Court's final judgment of June 9, 2005 is reproduced at Pet. App. 13, its June 28, 2005 judgment is reproduced at Pet. App. 20 and App. 39, and its August 23, 2005 judgment is reproduced at Pet. App. 33.

JURISDICTIONAL STATEMENT

The Court of Appeals' final judgment was entered on February 7, 2006. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the First and Fifth Amendments to the United States Constitution.

The First Amendment, U.S. Constitution, provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fifth Amendment, U.S. Constitution, provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

STATUTORY PROVISIONS INVOLVED

This case involves Federal Rule of Criminal Procedure 6(a) and Title 18 U.S.C. § 3332(a).

Federal Rule of Criminal Procedure 6(a) provides:

> (a) Summoning a Grand Jury.
>
> (1) *In General.* When the public interest so requires, the court must order that one or more grand juries be summoned. A grand jury must have 16 to 23 members, and the court must order that enough legally qualified persons be summoned to meet this requirement.
>
> (2) *Alternate Jurors.* When a grand jury is selected, the court may also select alternate jurors. Alternate jurors must have the same qualifications and be selected in the same manner as any other juror. Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror is subject to the same challenges, takes the same oath, and has the same authority as the other jurors.

Title 18 U.S.C. § 3332(a) provides:

> (a) It shall be the duty of each such grand jury impaneled within any judicial district to inquire into offenses against the criminal laws of the United States alleged to have been committed within that district. Such alleged offenses may be brought to the attention of the grand jury by the court or by any attorney appearing on behalf of the United States for the presentation of evidence. Any such attorney receiving information concerning such an alleged offense from any other person shall, if requested by such other person, inform the grand jury of such alleged offense, the identity of such other person, and such attorney's action or recommendation.

STATEMENT OF THE CASE

Jeffrey R. Rosenberg and Daniel V. Kinsella, of the law firm Schuyler, Roche & Zwirner, P.C., are attorneys employed by Michael P. Moner. The attorneys engaged in the practice of 'padding' their petitions for fees. Their acts were aided and abetted by two judges in the Circuit Court of Cook County, Brigid M. McGrath and Paddy H. McNamara. All are respondents.

When petitioner moved the two district court judges to convene a grand jury to investigate the mail frauds and other crimes perpetrated by the attorney respondents against petitioner, the lower courts avoided the questions and allegations within petitioner's complaints by the improper application of abstention doctrines.

The Seventh Circuit Court of Appeals dispensed with petitioner's request to have the lower courts convene, or allow access to a grand jury, as follows:

> Before leaving Kathrein's suit against Siegel, we address an argument he makes both here and in his appeal from the dismissal of his other federal complaint. In both federal actions Kathrein sought and was denied an order compelling a federal grand jury to investigate alleged crimes committed by the various defendants. In challenging those denials, Kathrein persists with his frivolous contention that he is entitled to appear before a grand jury to present his allegations. See *Korman v. United States*, 486 F.2d 926, 933 (7th Cir. 1973) (holding that authority to convene federal grand jury is vested in district court); cf. *Cook v. Smith*, 834 P.2d 418, 420-21 (N.M. 1992) (recognizing New Mexico's procedure permitting citizens to petition for convening a grand jury as rare). Kathrein admits that the goal of his proposed investigation is to lead to the prosecution of the individuals that he has sued, but a private citizen lacks standing to demand the prosecution of another. See *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973); *Johnson v. City of Evanston, Ill.*, 250 F.3d 560, 563 (7th Cir. 2001).

Note the words, "Kathrein persists in his frivolous contention that he is entitled to appear before a grand jury to present his allegations."

Kathrein's request is legitimate. It is supported by the Constitution, Congressional statute, a rule of federal criminal procedure, substantial case law, learned treatises, and hundreds of years of common law practice. His approach may be unconventional and unwelcome, but frivolous it is not.

Petitioner's request is slighted by reflex. He moves to exercise a hoary right. A right of which ordinary citizens are unaware, that attorneys would not dare to seek, that prosecutors have no need to request, and that judges commonly believe, is not cognizable.

"It's a recession when your neighbor loses his job; it's a depression when you lose yours." – Harry S. Truman. Or in this case, it's frivolous when a common citizen asserts this right; it's a legitimate argument when a member of the legal community does so.

Petitioner, and millions of independents like him, are thusly separated from the protection of federal criminal law. They must accept whatever ration of justice the legal profession – judges and lawyers – is inclined to dispense.

REASONS FOR GRANTING THE WRIT

The Writ must be granted because the Seventh Circuit Court of Appeals' decision conflicts with the original intent of Federal Rule of Criminal Procedure 6, 18 U.S.C. § 3332(a), this Court's prior decisions, decisions of the other Circuit Courts of Appeals, and their own precedent.

As petitioner will also demonstrate, *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) was wrongly decided and must be corrected either by this Court or by Congress.

I. An American citizen has a Constitutional right to petition the federal grand jury to investigate crimes committed against him.

The history of the grand jury plainly demonstrates that citizens have a right to present their evidence to the grand jury.

The First Amendment, U.S. Constitution, guarantees the right "to petition the government for redress of grievances." *Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 81 S.Ct. 523 (1961) and *California Motor Transport Co. v. Trucking Unlimited*, 92 S.Ct. 609 (1972) hold that the Petition Clause protects people's rights to make their wishes and interests known to government representatives in the legislature, judiciary, and executive branches. *Noerr Motor Freight, Inc.*, 81

S.Ct. at 530-531, *Trucking Unlimited*, 92 S.Ct. at 611-612. See also *McDonald v. Smith*, 105 S.Ct. 2787, 2789 (1985) (noting that James Madison in congressional debate on petition clause made clear that people have the right to communicate their will through direct petitions to the legislature and government officials).

No act of Congress can authorize a violation of the Constitution. *United States v. Brignoni-Ponce*, 95 S.Ct. 2574, 2578 (1975). The Constitution cannot be interpreted safely *except* by reference to common law and to British institutions as they were when the instrument was framed and adopted. *Ex Parte Grossman*, 45 S.Ct. 332, 333 (1925). That this applies with equal force to federal grand juries is equally clear. *Costello v. United States*, 76 S.Ct. 406, 408 (1956); *Blair v. United States*, 39 S.Ct. 468, 471 (1919); *In Re Grand Jury Proceedings*, 479 F.2d 458, 460-461 n. 2 (5th Cir. 1973) (collecting cases); *In Re Grand Jury January, 1969*, 315 F.Supp. 662, 675 (D. Md. 1970).

The Fifth Amendment had in view the rule of the *common law*, governing the mode of prosecuting those accused of crime. *Mackin v. United States*, 117 U.S. 348 (1886); *United States v. Deisch*, 20 F.3d 139, 145 n. 11 (5th Cir. 1994). The grand jury had common law origins. *In re April 1956 Term Grand Jury*, 239 F.2d 263, 268 (7th Cir. 1956).

Today's federal judges appear to have little or no understanding of how the grand jury operated under common law, or how rich was its tradition.

> The very fact of the presence of the prosecutor in the grand jury room *contradicts* the historically defined role of that body. How can the grand jury protect the accused from the accuser if the accuser is alone with the grand jury and can effectively *control* the course of its investigation?

> Schwartz, *Demythologizing The Grand Jury*, 10 American Criminal Law Review 701, 759 (1972); see also p. 758, n. 291.
>
> On November 3, 1806, Joseph Hamilton Daviess, United States Attorney for Kentucky, moved that a grand jury be convened to consider indicting Aaron Burr for attempting to involve the United States in a war with Spain. On December 3rd the grand jury was called. Daviess immediately moved "to be permitted to attend the grand jury in their room." This motion was considered "novel and unprecedented" and was denied. After hearing the evidence in secret the grand jury deliberated and, on December 5th, an ignoramus bill was returned.
>
> *Id.* at 734.

See also *United States v. Burr*, Fed. Cas. No. 14,892 (C.Ct.D.Ky. 1806).

> A solicitor is *not* a judicial officer. He *cannot* administer an oath. He *cannot* declare law. He *cannot* instruct the grand jury in the law. That function belongs to the *Judge alone*. If the grand jury desire to be informed of the law or of their other duties, they *must* go into court and ask instructions from the bench.
>
> *Lewis v. The Board of Commissioners of Wake Co.*, 74 N.C. 194, 197-199 (Superior Court of Wake County, 1876), quoted with approval in *United States v. Virginia-Carolina Chemical Co.*, 163 F. 66, 75 (C.Ct.M.D. Tenn. 1908) and *United States v. Kilpatrick*, 16 Fed. 765 (D.C.W.D.N.C. 1883).
>
> [A grand jury is] "a spear in the hands of ambitious prosecutors anxious to silence dissent or to climb to greater political heights over the backs of hapless defendants caught up in the system."

> Abourzek, *The Inquisition Revisited*, 7 Barrister 19 (1980).

In this case, the judiciary and the executive branches steadfastly block petitioner's *access* to his fellow citizens on the grand jury.

As a federal judge in the nineteenth century remarked, "The moment the executive is allowed to control the action of the courts in the administration of criminal justice, their independence is *gone*." *In re Miller*, Fed. Cas. No. 9,552 (C.Ct.D.Ind. 1878).

> [I]t is clear that the emperor and his servants assumed more and more direct control of legal procedure, at first paralleling surviving courts and procedures, but eventually superseding them. Gradually the sources of law were narrowed down to one—the edict of the emperor.
>
> Peters, *Inquisition*, pp. 14-15 (1988).

That prosecutors were not allowed in the grand jury room, under the indictment by grand jury clause of the Fifth Amendment, was well understood in this country for over 100 years. See *United States v. Rosenthal*, 121 Fed. 862, 874 (S.D.N.Y. 1903) and the cases cited therein.

In order to overcome the *Rosenthal* decision and the intention of the Framers of the Fifth Amendment, Congress then enacted, on June 30, 1906, the statute that has come down to us as 28 U.S.C. § 515(a) and the Rule that has come down to us as Federal Rule of Criminal Procedure 6(d), permitting the attorneys for the government to "attend the grand jury in their room."

> The VICE-PRESIDENT. The bill will be read for the information of the Senate.
>
> The Secretary read the bill and there being no objection, the Senate, as in Committee of the Whole, proceeded to its

consideration. It authorizes the Attorney-General, the Solicitor-General, the Assistant to the Attorney-General, the Assistant Attorneys-General, special assistants to the Attorney-General, special assistants to the district attorneys, and special counsel appointed under any provision of law to begin and conduct any kind of legal proceeding, civil or criminal, in any court of any judicial district, or before any commission or commissioner or quasi-judicial body created under the laws of the United States, including grand jury proceedings, whether they reside in the judicial district where such proceedings are brought or not. But all such proceedings shall be begun and conducted by such officials, attorneys, and counsel only under the direction, supervision, and control of the Attorney-General.

Mr. HOPKINS. I should like to have the Senator presenting the bill give a little explanation of the reason for the legislation.

Mr. KNOX. I ask that the report on the bill, which is less than half a page, be read. It is the most succinct statement of the purpose of the bill I could possibly suggest.

The VICE-PRESIDENT. The report will be read.

The Secretary read the report submitted by Mr. Knox, May 28, 1906, as follows:

The Committee on the Judiciary, to whom was referred the bill (S. 2969) authorizing the Attorney-General and certain other officers of the Department of Justice to conduct legal proceedings in any court of the United States, having considered the same, report the bill favorably without amendment. It is frequently desirable and even necessary that the Attorney-General should detail an officer of his Department to assist some United States attorney in the investigation and prosecution of cases of unusual importance or interest, or to make an independent investigation and report the result to the Department, and,

> if necessary, to prosecute the same; or, where this latter is impracticable, to appoint a special assistant to the Attorney-General, particularly in criminal matters.
>
> In 1903 the Attorney-General appointed a special assistant to investigate and report in the Japanese silk fraud cases, and it was held (121 Fed. Rep. 826, *U. S. v. Rosenthal*) that a special assistant to the Attorney-General is not an officer of the Department of Justice under sections 359 and 367, Revised Statutes, or other provisions of the United States Statutes, and the indictment was quashed because of the presence of this attorney in the grand jury room. *That case further holds that neither the Attorney-General, the Solicitor-General, nor any officer of the Department has the power to conduct or aid in the conduct of proceedings before a grand jury.* It is clearly of great importance that they should have this power.
>
> Congressional Record, pp. 7913-7914 (June 6, 1906).

I.e., one hundred years ago this June, the Congress took the common law right to petition the grand jury away from the people and gave it to the Department of Justice.

The Congress cannot – merely by legislating – amend the Constitution. *United Transp. Union v. I.C.C.*, 891 F.2d 908, 915-916 (D.C. App. 1989). [Congress] . . . is not given power by itself . . . to amend the Constitution. *Myers v. United States*, 47 S.Ct. 21, 37 (1926), *In re Young*, 141 F.3d 854, 859 (8th Cir. 1998). The legislature cannot enact laws for the accomplishment of objects not entrusted to the federal government. *Linder v. United States*, 45 S.Ct. 446 (1925).

No one in 1791 entrusted the federal government with the authority to enact laws intended to turn the grand jury into a rubber stamp for federal prosecutors. Ironically, federal prosecutors employed by the Department of Justice did not even *exist* until late in the following century. The Department of Justice is wholly a creation of Congress, June 22, 1870. At its

creation the *only* authority members of that agency possessed was to "have the case of prosecutions for mail depredations and penal offenses against the postal laws," Sec. 7, and to "compile statistics of crime," Sec. 12, 16 U.S. Statutes At Large 162-164.

The grand jury is a pre-constitutional institution, given constitutional stature by the Fifth Amendment. *United States v. Chanen*, 549 F.2d 1306, 1312 (9th Cir. 1977). If this is in fact true, then the grand jury would have to function in the same manner and fashion as its British predecessor, anything less would constitute an unconstitutional procedure:

> "I know not how long the practice in that matter of admitting counsel to a grand-jury hath been; I am sure it is a very unjustifiable and unsufferable one. If the grand-jury have a doubt in point of law, they ought to have recourse to the court, and that publicly, and not privately, and not to rely upon the private opinion of counsel, especially of the king's counsel, who are, or at least behave themselves as if they were parties."
>
> Sir John Hawles, *Remarks on Colledge's Trial*, 8 How. St. Tr. 724 (1681).

The Declaration of Rights of 1689 is antecedent of our own constitutional text. The original meaning and circumstances of that enactment are relevant. See *Harmelin v. Michigan*, 111 S.Ct. 2680, 2687 (1991).

Merely *allowing* a prosecutor in the grand jury room was a violation of the grand jurors' oath. *Proceedings Against The Earl Of Shaftesbury*, 8 How. St. Tr. 759, 773 (1681), quoted in *Hale v. Henkel*, 26 S.Ct. 370, 373 (1906).

To this day this is the law in Connecticut State grand juries. *Cobbs v. Robinson*, 528 F.2d 1331, 1338 (2nd Cir. 1975).

Under the procedures followed by our ancestors before their migrations from England the prosecution of offenses was left

entirely to private persons, or to public officers who acted in their capacity of private persons and who had hardly any legal powers beyond those which belonged to private persons. Stephen, *A History of the Criminal Law of England*, Volume I, at 493, quoted in *United States v. Marion*, 92 S.Ct. 455, 468 n. 2 (1971).

The idea of a public prosecutor is a *French* practice. *Id.*

The English practice was that followed in the United States for some time. *Id.*

Private individuals conducted the bulk of prosecutions in colonial times. Dongel, *Is Prosecution A Core Executive Function? Morrison v. Olson and the Framers Intent*, 99 Yale L. J. 1069 (1990). See also *United States v. Baird*, 85 F. 633 (C.Ct.D.N.J. 1897) (complaint by postal inspector); *In Re Price*, 83 F. 830 (C.Ct.S.D.N.Y. 1897) (complaint by private citizen); *United States v. Farrington*, 5 F. 343, 346 (D.C.N.Y. 1881) (evidence of grand jurors competent to ascertain who *was* prosecutor).

II. An American citizen has a statutory right to petition the federal grand jury to investigate crimes committed against him.

Petitioner devoted thirty pages and cited nearly two hundred authorities in his 'frivolous' lower court briefs supporting his right to access the federal grand jury. His arguments were dismissed with one sentence. This would hardly reflect an earnest deliberation.

> Painting black lines on the sides of a horse and calling it a zebra does not make it one.
>
> *United States v. Vazquez-Rivera*, 135 F.3d 172, 177 (1st Cir. 1998).

> The bending of the meanings of words is symptomatic of a diseased institution, with the angle of linguistic deflection indicating the seriousness of the cancer within. The Spanish Inquisition represented an advanced case. *Rawson's Dictionary of Euphemisms and Other Doubletalk*, rev. ed., p. 35 (1995).
>
> "When *I* use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean—neither more nor less."
>
> "The question is," said Alice, "whether you *can* make words mean so many different things."
>
> "The question is," said Humpty Dumpty, "which is to be master—that's all."
>
> Lewis Carroll, *The Annotated Alice: Alice's Adventures In Wonderland & Through The Looking Glass*, p. 269 (Martin Gardner 1960).

Alice-in-Wonderland was a world in which words had no meaning. *Welch v. United States*, 90 S.Ct. 1792, 1803 (1970).

> [U]ltimately, the guarantee of [our] rights is no stronger than the integrity and fairness of the judge to whom the trial is entrusted.
>
> *Bracy v. Gramley*, 81 F.3d 684, 703 (7th Cir. 1996) (dissent), *reversed*, 520 U.S. 899, 117 S.Ct. 1793 (1997).

The dishonest application of the English language by the lower courts demonstrates that the rights granted to American citizens in their Constitution are [in effect] merely licensed. Citizens must pray to the legal community for leave to assert those rights. Where their prayers are blocked, their rights are denied. The legal community has taken control of the right to assert our guaranteed rights, *i.e.*, they are *not* inalienable, they are dispensed at will.

> ROBERTS: "So to the extent you are talking about the injustices in society and the discrimination in society, the best thing the courts can do is enforce the rule of law and provide a level playing field for people to come in and vindicate their rights and enforce the rule of law."
>
> Judge John Roberts, Transcript of Senate Confirmation Hearing, September 13, 2005

By its redefinition of words, the lower court amended the Constitution and denied Kathrein the right to petition a mechanism of his government for the redress of his grievances.

The prosecutor was a private individual. *United States v. Rawlinson*, 27 Fed. Cas. 715, Fed. Case No. 16,123 (C.Ct.D.C. 1802) (Court of the opinion his name should be written at foot of the indictment); *United States v. Shackelford*, 27 Fed. Cas. 1037, Fed. Case No. 16,261 (C.Ct.D.C. 1828) (indictment quashed).

The "prosecutor" means a person who prosecutes in the name of the United States, or in the name of the United States and himself. *United States v. Sandford*, 27 Fed. Case 952, Fed. Case No. 6,221 (C.Ct.D.C. 1806).

Public prosecutors are . . . not part of America's heritage from British common law. Jacoby, *The American Prosecutor: A Search For Identity*, p. 7 (1980).

[U]ntil 1853 there was nowhere any general, organized control of Federal prosecution. *Id.* at p. 20.

U.S. Attorneys and their subordinates use dishonest application of the language to avoid culpability in the denial of citizen's rights. Compare a request petitioner submitted to the U.S. Attorney, Exhibit A, App. 40, with the deflective response petitioner received two weeks later, Exhibit B, App. 43.

The improper motives and methods of today's prosecutors, *i.e.*, government attorneys, have become systemic.

> Centac can identify the Exxons of international crime, can pursue them, infiltrate them, gather roomsful of intelligence and evidence against them. But it cannot prosecute them. Only U.S. Attorneys can do that. And U.S. Attorneys around the country are not in a hurry to tie up prosecutors on such time-consuming, highly complex conspiracy cases. Buy-bust cases, swift and simple, are easier, more immediately gratifying, and visible to the voters. Centac frequently finds itself facing the same old problem – how to find a prosecutor with the intelligence, energy, and humility to study, master, and bring to trial a case with dozens of defendants, hundreds of witnesses, and documentation filling a roomful of filing cabinets.
>
> This time the problem's name is Scott Miller. The Steinberg Centac has been promised two full-time prosecutors and one part-time, but has received only Scott Miller, who is very part-time indeed. He is a whiz at buy-bust prosecutions, and DEA agents who like rapid-fire, cops-and-robbers cases speak highly of him. He is not about to spend months laboriously unraveling the intricate relationships of hundreds of Steinberg employees and associates. Better to indict Steinberg and a couple of top executives, bask momentarily in the headlines, and let it go at that. He justifies this philosophy with a boast. "I don't want sparrows, I want peacocks." Centac is based on the proposition that peacocks cannot exist without sparrows. Sparrows grow up to be peacocks. Donald Steinberg was once a sparrow. So was Sicilia-Falcon. So was Lu Hsu-shui. Miller isn't listening. He is a close friend of Pat Sullivan, chief of the criminal division in the South Florida U.S. Attorney's Office. It was Sullivan who, after his meeting in Washington with Dennis Dayle and other prosecutors, assigned Scott to the Steinberg Centac. To convince Sullivan to remove Scott, his friend, would be a delicate, difficult operation.

> James Mills, *The Underground Empire, Where Crime and Governments Embrace*, pp. 439-440 (Doubleday & Co. 1986).

To be independent and informed, the grand jury must be able to obtain all relevant evidence, since only then can its judgment truly be informed. *United States v. Mandujano*, 425 U.S. 564, 573, 96 S.Ct. 1768, 48 L.Ed.2d 212 (1976) (plurality opinion); *United States v. Calandra*, 414 U.S. 338, 343-44, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974).

The wisdom of maintaining grand jury independence from a public prosecutor has deep roots in our system of justice.

> A grand juror cannot carry on systematic persecution against a neighbor whom he hates, because he is not permanent in the office. The judges generally, by a charge, instruct the grand jurors in the infractions of law which are to be noticed by them; and our judges are in the habit of printing their charges in the newspapers.
>
> *Thomas Jefferson to Edmund Randolph*, 1793. ME 9:83.

> They bring into the grand jury room the experience, knowledge and viewpoint of all sections of the community. They have no axes to grind and are not charged personally with the administration of the law. No one of them is a prosecution attorney or law-enforcement officer ferreting out crime.
>
> *In Re Groban's Petition*, 77 S.Ct. 510, 520 (1957) (dissent).

III. Members of the executive and judicial branches of government do not have the authority to block a citizen's access to the federal grand jury.

Petitioner relied upon the following authorities in his "frivolous" request to present evidence of criminal wrongdoing

to a federal grand jury.

The Seventh Circuit completely failed to address *Application of Wood*, 833 F.2d 113 (8th Cir. 1987) (district court judge ordered U.S. Attorney to present petitioner's evidence to federal grand jury).

[The grand jurors] are not appointed for the prosecutor or for the court, they are appointed for the government *and* for the *people*. *Hale v. Henkel*, 26 S.Ct. 370, 373 (1906).

Shall diligent inquiry be enjoined? *Id.* at 374.

Members of the grand jury are supposed to act *independently* of either the prosecuting attorney or judge. See *United States v. Singer*, 660 F.2d 1295, 1302 n. 14 (8th Cir. 1981).

Where federal judges and U.S. Attorneys block or control the flow of information about criminal violations of federal law, all grand jury independence is lost.

> A grand jury is a group of 16-23 individuals drawn at random from the citizens of this district. They are impaneled by order of the Chief Judge of this Court. Their role as an independent body is to inquire into alleged violations of the law to ascertain whether the evidence presented by the government is sufficient to warrant a trial by a petit jury or judge. The grand jury has broad investigative authority due its ability to compel testimony, to order the production of documents and its power to indict.
>
> *Grand Jury Foreperson's Handbook*, U.S. District Court for the N.D. of Illinois, Eastern Division (8/97).

The longstanding principle is that the public has a right to every man's evidence is *particularly* applicable to grand jury proceedings. *Branzburg v. Hayes*, 92 S.Ct. 2646, 2660 (1972) (citations omitted).

> Principles of law, whether embodied in the Constitution and laws of the United States, the Federal Rules of Criminal Procedure or the local rules of court must remain fixed and secure. The strictures government court and prosecutor alike are designed to insure that the processes of criminal justice are carried out with care and deliberation, for were the law applied casually, and without thought, the result would not be justice, and the enforcers of the law would become merely the custodians of power.
>
> *McCarthy v. Manson*, 554 F.Supp. 1275, 1279 (D. Conn. 1982).

Where there are no remedies, there are no rights. Where the U.S. District Court for the Northern District of Illinois and the Seventh Circuit Court of Appeals deny petitioner's remedies, they deny his rights. Petitioner's remedy is unfiltered access to the federal grand jury to present his evidence of violations of federal statutes against him by the respondents.

It is the duty and right . . . of every citizen to assist in prosecuting, and in securing the punishment of any breach of the peace of the United States. *In re Quarles*, 15 S.Ct. 959, 960-961 (1894).

[A citizen] has a constitutional right to inform the government of violations of federal law . . . [a] privilege of citizenship guaranteed by the Fourteenth Amendment. *Equal Employment Opportunity Commission v. Pacific Press Publishing Association*, 676 F.2d 1272 (9th Cir. 1982).

[I]nforming is a right or privilege secured by the Constitution or laws of the United States. *Velarde-Villarreal v. United States*, 354 F.2d 9 n. 3 (9th Cir. 1965).

The grand jury can insist upon the production of every person's testimony. *In re Subpoened Grand Jury Witness*, 171 F.3d 511, 513 (7th Cir. 1999).

The grand jury cannot review what it cannot (is not allowed to) see.

The Federal Rules of Criminal Procedure…have the force of statute. *United States v. Christian,* 660 F.2d 892, 899 (3rd Cir. 1981).

If this Rule [6(a)] is applied with full force in the Virgin Islands, it arguably would confer on the district court the authority to convene a grand jury to investigate crimes and indict where it found probable cause. *Id.* at 900.

There is a power that the court does not have – the power to fundamentally alter the historic relationship between the grand jury and its constituting court. *Whitehouse v. United States District Court For District of Rhode Island,* 53 F.3d 1349, 1357 (1st Cir. 1995) quoting *United States v. Williams,* 112 S.Ct. 1735, 1744 (1992).

As the case history cited herein illustrates, most of today's federal judges exercise no deference to that "historic relationship."

> At the outset, I would point out that plaintiffs do not seek to compel the U.S. Attorney to prosecute the named defendants. Rather, they seek to have either the court or the United States Attorney present certain information to the grand jury. This distinction is critical because almost the entirety of the opposition to plaintiffs' motion is based on the mischaracterization by the U.S. Attorney and the other defendants of plaintiffs' motion as one seeking to compel the U.S. Attorney to initiate proceedings against the other defendants.
>
> *In Re Grand Jury Application,* 617 F.Supp. 199, 201 (S.D.N.Y. 1985).

I.e., The Seventh Circuit applied the identical mischaracterization in *its* ruling.

> "Congress may enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Linda R.S. v. Richard D.*, 410 U.S. 614, 617, n.3, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973). *See Warth v. Seldin*, 422 U.S. 490, 500, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975); *Trafficante v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 212, 93 S.Ct. 364, 34 L.Ed.2d 415 (1972) (White, J., concurring); *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 6, 88 S.Ct. 651, 19 L.Ed.2d 787 (1968). When determining whether a plaintiff has standing, I need only examine the complaint to see if the plaintiff has alleged that he has suffered a cognizable injury. *Nash v. Califano*, 613 F.2d 10, 14 (2d Cir. 1980). 18 U.S.C. § 3332(a) creates a duty on the part of the United States Attorney that runs to the plaintiffs, and the breach of that duty gives the plaintiffs standing to seek its enforcement.
>
> *Id.* at 201 (footnote omitted).

It appears contradictory, and perhaps punitive, that the applications of 18 U.S.C. § 3332(a) and *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973) can be so straightforward in the Southern District of New York, yet be completely ignored when seeking the benefit of the identical statute, 18 U.S.C. § 3332(a), in the N.D. of Illinois or the Seventh Circuit Court of Appeals.

The sole function of the court is to enforce the law according to the statute. *Caminetti v. United States*, 242 U.S. 470, 485, 37 S.Ct. 192, 194 (1917).

The goal of statutory interpretation is to implement congressional intent. *Cabell Huntington Hosp., Inc. v. Shalala*, 101 F.3d 984, 986 (4th Cir. 1996).

Courts cannot judicially rewrite statutes. *In re Espy*, 80 F.3d 501, 505 (D.C. Cir. 1996) quoting *Aptheker v. Secretary of State*, 84 S.Ct. 1659, 1668 (1964).

Policy considerations may not trump the plain language of the statute. *American Textile Mfrs. Institute v. The Limited*, 190 F.3d 729, 738-739 (6th Cir. 1999).

In the absence of legislative guidance, it is inappropriate for courts interpreting statutes to pick and choose based on the court's assessment of the relative importance of the interests served. *Suter v. Munich Reinsurance Co.*, 223 F.3d 150, 160 (3rd Cir. 2000) (citation omitted).

The Seventh Circuit Court of Appeals relied upon four cases as "precedent" to deny petitioner the relief he sought, *i.e.*, access to the federal grand jury to present his evidence, pursuant to Federal Rule of Criminal Procedure 6(a) and 18 U.S.C. § 3332(a).

Each case is addressed in turn.

> Appellants contend that under 18 U.S.C. § 3332(b) a District Court is empowered to impanel only two Special Grand Juries in a single district at any given time.
>
> *In re Korman*, 486 F.2d 926 (7th Cir. 1973) (footnote omitted).

It appears contradictory that the Seventh Circuit can quote a case that *addresses* 18 U.S.C. § 3332(b), then *ignore* 18 U.S.C. § 3332(a) as it applies to petitioner's case.

> Article II, Section 14 of the New Mexico Constitution states that "a grand jury shall be ordered to convene . . . upon the filing of a petition therefor signed by not less than the lesser of two hundred registered voters or five percent of the registered voters of the county." In this mandamus action we assumed original jurisdiction, N.M. Const. art. VI, § 3, to

> decide whether a district Judge enjoys discretionary authority to refuse to convene a grand jury requested by petition. We conclude a Judge is mandated to convene the grand jury or otherwise substantially comply with the request.
>
> *Cook v. Smith*, 834 P.2d 418, 114 N.M. 41, 53 (1992).

It appears contradictory that the Seventh Circuit would address a *state* constitutional provision and *ignore* a federal statute, simultaneously.

The Constitution's requirements are as applicable to the police when they choose sides in a dispute among citizens as when they seize evidence for use in criminal prosecutions. *See, e.g., Soldal v. Cook County*, 506 U.S. 56 (1992); *Guzell v. Hiller*, 223 F.3d 518 (7th Cir. 2000).

> *Johnson v. City of Evanston*, 250 F.3d 560 (7th Cir. 2001).

Apparently this principle does not apply to judges and prosecutors who "choose sides" in order to protect corrupt state court judges and a law firm engaged in criminal violations of federal law.

Finally, there is the application (or, more correctly, misapplication) of *Linda R.S. v. Richard D., supra*.

Petitioner did not demand a *prosecution*; he requested *access* to a federal grand jury, pursuant to Federal Rule of Criminal Procedure 6(a) and/or 18 U.S.C. § 3332(a), to report criminal acts. To stand this argument on its head, even the United States Attorney cannot *demand* a prosecution. If the grand jury refuses to indict, that is the end of it.

Simply put, *Linda R.S.* was wrongly decided.

> Article 602, in relevant part, provides: "any parent who shall willfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children

> under eighteen years of age, shall be guilty of a misdemeanor, and upon conviction, shall be punished by confinement in the County Jail for not more than two years." The Texas courts have consistently construed this statute to apply solely to the parents of legitimate children and to impose no duty of support on the parents of illegitimate children. *See Home of the Holy Infancy v. Kaska*, 397 S.W.2d 208, 210 (Tex. 1966); *Beaver v. State*, 96 Tex. Cr. R. 179, 256 S.W. 929 (1923). In her complaint, appellant alleges that one Richard D. is the father of her child, that Richard D. has refused to provide support for the child, and that although appellant made application to the local district attorney for enforcement of Art. 602 against Richard D., the district attorney refused to take action for the express reason that, in his view, the fathers of illegitimate children were not within the scope of Art. 602.
>
> Appellant argues that this interpretation of Art. 602 discriminates between legitimate and illegitimate children without rational foundation and therefore violates the Equal Protection Clause of the Fourteenth Amendment. *Cf. Gomez v. Perez*, 409 U.S. 535 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972); *Glona v. American Guarantee & Liability Ins. Co.*, 391 U.S. 73 (1968); *Levy v. Louisiana*, 391 U.S. 68 (1968). But *cf. Labine v. Vincent*, 401 U.S. 532 (1971).
>
> *Linda R.S. v. Richard D.*, *supra*, 410 U.S. at 615-616 (footnote omitted).

Linda R.S. violates the Equal Protection Clause. This was *not* one of this Court's more sentient decisions, in that it abandoned *children* who, through no fault of their own, were not sanctioned by the state.

> To be sure, appellant no doubt suffered an injury stemming from the failure of her child's father to contribute support payments. But the bare existence of an abstract injury

> meets only the first half of the standing requirement. "The party who invokes [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some direct injury as the result of [a statute's] enforcement." *Massachusetts v. Mello*n, 262 U.S. 447, 488 (1923).
>
> *Id.* at 618.

Denial of food, clothing, and shelter is hardly an abstract injury.

> The Court's prior decisions consistently hold that a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution. *See Younger v. Harris*, 401 U.S. 37, 42 (1971); *Bailey v. Patterson*, 369 U.S. 31, 33 (1962); *Poe v. Ullman*, 367 U.S. 497, 501 (1961). Although these cases arose in a somewhat different context, they demonstrate that, in American jurisprudence at least, a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.
>
> *Id.* at 619.

A prosecution is not an investigation.

Between 1701 and at least June 30, 1906, a private citizen had a judicially cognizable interest in the prosecution of another, as petitioner has demonstrated.

The dissenters in this 5-4 decision appeared willing to ignore status quo and consider the effect of the practice.

> Appellant, her daughter, and the children born out of wedlock whom she is attempting to represent have all allegedly been excluded intentionally from the class of persons protected by a particular criminal law. They do not get the protection of the laws that other women and children get. Under Art. 602, they are rendered non-

> persons; a father may ignore them with full knowledge that he will be subjected to no penal sanctions. The Court states that the actual coercive effect of those sanctions on Richard D. or others "can, at best, be termed only speculative." This is a very odd statement. I had always thought our civilization has assumed that the threat of penal sanctions had something more than a "speculative" effect on a person's conduct. This Court has long acted on that assumption in demanding that criminal laws be plainly and explicitly worded so that people will know what they mean and be in a position to conform their conduct to the mandates of law. Certainly Texas does not share the Court's surprisingly novel view. It assumes that criminal sanctions are useful in coercing fathers to fulfill their support obligations to their legitimate children.
>
> Unquestionably, Texas prosecutes fathers of legitimate children on the complaint of the mother asserting nonsupport and refuses to entertain like complaints from a mother of an illegitimate child. I see no basis for saying that the latter mother has no standing to demand that the discrimination be ended, one way or the other.
>
> If a State were to pass a law that made only the murder of a white person a crime, I would think that Negroes as a class would have sufficient interest to seek a declaration that that law invidiously discriminated against them. Appellant and her class have no less interest in challenging their exclusion from what their own State perceives as being the beneficial protections that flow from the existence and enforcement of a criminal child-support law.
>
> I would hold that appellant has standing to maintain this suit and would, accordingly, reverse the judgment and remand the case for further proceedings.
>
> *Id.* at 620-622.

Fortunately for children born out of wedlock, almost all states in the Union have enacted laws nullifying this decision.

Unfortunately, the proposition that a "private citizen lacks standing to demand the prosecution of another" has been interpreted by our courts to mean that citizens who have been damaged by the crimes of others, shall have no opportunity to present their evidence, except at the will of a judge or a prosecutor. It goes without saying that judges and prosecutors can have interests that conflict with the interests of the damaged party. Therefore, a citizen's right to assert his rights is fettered; it becomes a gift to be dispensed in conformity with the interests of the giver. The common law is lost.

> Respondent filed this suit under 42 U. S. C. §1983 alleging that petitioner violated the Fourteenth Amendment's Due Process Clause when its police officers, acting pursuant to official policy or custom, failed to respond to her repeated reports over several hours that her estranged husband had taken their three children in violation of her restraining order against him. Ultimately, the husband murdered the children. The District Court granted the town's motion to dismiss, but an en banc majority of the Tenth Circuit reversed, finding that respondent had alleged a cognizable procedural due process claim because a Colorado statute established the state legislature's clear intent to require police to enforce restraining orders, and thus its intent that the order's recipient have an entitlement to its enforcement. The court therefore ruled, among other things, that respondent had a protected property interest in the enforcement of her restraining order.
>
> Held: Respondent did not, for Due Process Clause purposes, have a property interest in police enforcement of the restraining order against her husband. Pp. 6-19.
>
> *Town of Castle Rock, Colorado v. Gonzales*, 125 S.Ct. 2796 (2005).
>
> In other contexts, we have explained that "a private citizen lacks a judicially cognizable interest in the prosecution or

> non-prosecution of another." *Linda R. S. v. Richard D.*, 410 U. S. 614, 619 (1973).
>
> *Id.* at n. 13.

One must wonder whether, had this incident happened to a citizen of influence as opposed to a citizen with none, the question would have risen to this Court or if so, what this Court's decision would have been.

These sworn statements, as the District Court determined, adequately documented injury in fact. We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons "for whom the aesthetic and recreational values of the area will be lessened" by the challenged activity. *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972). *See also Defenders of Wildlife*, 504 U.S., at 562-563 ("Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing.").

> *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000).

Birdwatchers have standing but mothers of murdered children do not.

> Petitioners, state correctional officials, seek review of a decision of the United States Court of Appeals for the Fourth Circuit finding petitioners in violation of 42 U.S.C. § 1983 for opposing respondents' application for an arrest warrant. We grant the motion of respondents for leave to proceed *in forma pauperis* and the petition for writ of *certiorari* and reverse on the basis of our decision in *Linda R. S. v. Richard D.*, 410 U.S. 614 (1973).
>
> Respondents were prison inmates in the Central Correctional Institution in Columbia, S. C., at the time of a prison uprising in August 1973. Respondents contend that

during the uprising they were unnecessarily beaten by prison guards. Respondent Timmerman sought criminal arrest warrants against four prison guards. In support of his action, Timmerman presented sworn statements to a Magistrate along with alleged "confidential information" from an employee at the prison who purportedly investigated the incident and concluded that respondents were victimized by the prison guards. Although a subsequent hearing in the Federal District Court indicated that the information provided by Timmerman was "suspect at best," it provided sufficient evidence to convince the state-court Magistrate that probable cause existed for issuance of arrest warrants against the prison guards. The Magistrate informed the legal adviser to the South Carolina Department of Corrections of his intent to issue the warrants and the legal adviser relayed this information to the prison Warden.

In an effort to have the criminal action against the correctional officers dropped, the legal adviser and Warden met with the County Sheriff, Deputy Attorney, and State Solicitor. At the meeting, the State Solicitor reviewed the facts and stated that there would be no indictment against three of the accused guards, but that he was unsure whether an indictment would be sought against the fourth guard. As a result of the meeting, the State Solicitor wrote a letter to the Magistrate requesting that the warrants not be issued. The Solicitor also stated that he intended to ask the State Law Enforcement Division to conduct an investigation concerning the charges made against the officers involved; the Magistrate did not issue the warrants and no state investigation was initiated.

Respondents subsequently filed suit in the United States District Court for the District of South Carolina contending, among other claims, that petitioners conspired in bad faith to block the issuance of the arrest warrants for the prosecution of the prison guards. The District Court concluded that petitioners denied respondents their right to

> "a meaningful ability to set in motion the governmental machinery because [petitioners' activities] stopped the machinery unlawfully, not in a proper way, as for example, upon a valid determination of lack of probable cause." Although the State Solicitor and the Magistrate were found to be immune from damages, the District Court concluded that the legal adviser to the prisons and the Director of the Department of Corrections were liable for their actions in requesting the State Solicitor to discourage issuance of the warrants. Respondents were awarded $3,000 in compensatory damages, $1,000 in punitive damages and attorney's fees against the two petitioners.
>
> The United States Court of Appeals for the Fourth Circuit affirmed and acknowledged that under *Linda R. S. v. Richard D.*, *supra*, at 619, "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another."The Court of Appeals concluded, however, that *Linda R. S.* did not foreclose respondents' right to seek an arrest warrant.
>
> *Leeke v. Timmerman*, 454 U.S. 83, 84-86, 102 S.Ct. 69 (1981) (footnote omitted).

This case conspicuously failed to address the following:

Whites comprise 67.2% of South Carolina's general population and blacks comprise 29.5%.

The population of South Carolina prisons is exactly opposite. Of those incarcerated, blacks comprise 67% and whites comprise 31%.

I.e., the "Rodney King treatment" perpetrated on prison inmates, most of whom were black, was apparently looked on with approval by eight upper class whites and one black (Thurgood Marshall) who spent most of his time on the U.S. Supreme Court authoring dissenting opinions.

Control of the grand jury by government attorneys and lower court judges can be corrected even without a grant of certiorari by this Court.

Congress has the authority to overrule wrongly decided cases. *Wesson v. United States*, 48 F.3d 894, 901 (5th Cir. 1995).

Congress . . . may cure any error made by the courts. *Fast v. School Dist. Of City of Ladue*, 728 F.2d 1030, 1034 (8th Cir. 1984) (en banc).

Congress has the power to counter judicial doctrine. *Belgard v. State of Hawaii*, 883 F.Supp. 510, 514 (D. Hawaii 1995).

It should not be necessary for Congress to visit this issue.

CONCLUSION

Petitioner's question tests the application of checks and balances. It asks this Court to settle the intent of Congress in 18 U.S.C. § 3332(a) and to determine whether the "public interest" in Federal Rule of Criminal Procedure 6(a) should be excepted by those against whom it is invoked.

Did Congress intend that the subjects of inquiry be the gatekeepers of inquiry and if so, would this sanction a conflict of interest against the public interest?

For the reason set forth above, this petition for a writ of certiorari should be granted.

Dated: May 8, 2006

Respectfully submitted,

MICHAEL L. KATHREIN
7601 NORTH EASTLAKE
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(773) 761-6000
Pro se Petitioner

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February 28, 2006

Patrick J. Fitzgerald
United States Attorney
Northern District of Illinois
United States Attorney's Office
219 S. Dearborn Street – 5th Floor
Chicago, IL 60604-1702

Sent by Certified Mail
No. 7003 3110 0002 6517 9209

Dear Mr. Fitzgerald,

I am the victim of an ongoing mail fraud conducted by members of the law firm Schuyler, Roche & Zwirner, P.C., among others, with a business address of 130 East Randolph Street, Suite 3800, One Prudential Plaza, Chicago, IL 60601.

Attached to this letter is partial evidence of that fraud.

As the exhibits show, this is not a case of a law firm merely "padding" its billings. Indeed, SRZ's actions extend well beyond the bounds of reasonable criminal activity.

By comparing the extraordinary fees sought, to their minimal work product, it is plain that the evidence against them is ample and that the fraud nearly proves itself.

Note that SRZ's Petition for Fees includes tens of thousands of dollars for fees previously collected, for services rendered to separate actions, for costs unrelated to that instant action, and for fees charged (as co-defendants)

to themselves, for representing themselves. (Illegal hybrid-representation is another matter.)

I already possess considerable supporting physical evidence of this crime and have good reason to believe that discovery would reveal additional statutory violations.

Therefore, and by this letter, I request direct access to the Special Grand Jury in Chicago, pursuant to my statutory right under 18 U.S.C. § 3332(a). See also *In the matter of In re Grand Jury Application*, 617 F.Supp. 199 (S.D.N.Y. 1985).

This letter is not a request or a demand for you or your office to investigate or prosecute.

Very specifically, this is a limited request for you to arrange for me to present my evidence to the Special Grand Jury in Chicago so that they may consider and perhaps investigate these crimes. Of course, whether or not to indict will and should be, the sole and unfettered determination of the Special Grand Jury.

In addition to the fraudulent Petition for Fees filed by the above named parties, I expect to present other legal information for the Special Grand Jury's consideration:

The elements of mail fraud are a scheme to defraud and use of the mail in furtherance of that scheme. *United States v. Biesiadecki*, 933 F.2d 539, 545 (7th Cir. 1991).

The mail fraud statute proscribes only fraudulent schemes to defraud, and it is not necessary that the scheme to defraud actually succeed. See, *e.g., United States v. Wellman*, 830 F.2d 1453, 1461 (7th Cir. 1987) (the essential elements of a mail fraud offense under 18 U.S.C. § 1341 are a scheme to defraud and the use of the mails in furtherance of that scheme).

Conspiracy to commit mail fraud requires proof of these elements:

(1) that the conspiracy to commit mail fraud existed;

(2) that the defendant(s) became a member of the conspiracy to commit mail fraud with an intention to further that conspiracy; and

(3) that an overt act was committed by at least one conspirator in furtherance of the conspiracy to commit mail fraud.

See *United States v. Shelton*, 669 F.2d 446, 450-51 (7th Cir. 1982) and *United States v. Craig*, 573 F.2d 455, 486 (7th Cir. 1977).

Please advise me as to when I may submit my evidence of these material violations of federal criminal law to the Special Grand Jury in Chicago.

I look forward to your earnest response to this request.

Sincerely,

Michael Lee Kathrein

Attached: PETITION FOR FEES EXPENSES AND COSTS IN SUPPORT OF DEFENDANT MICHAEL MONAR'S RENEWED MOTION FOR SANCTIONS AGAINST PLAINTIFF MICHAEL LEE KATHREIN

MOTION TO STRIKE CO-DEFENDANT CONWAY'S MOTION FOR RECONSIDERATION OF HIS MOTION FOR SANCTIONS

U.S. Department of Justice

[Logo]

United States Attorney
Northern District of Illinois

Everett McKinley Dirksen Building
(312) 353-5300
219 S. Dearborn St., 5th Floor
Chicago, Il. 60604

March 9, 2006

Mr. Michael Kathrein
7601 North Eastlake Terrace
Chicago, Illinois 60626

Dear Mr. Kathrein:

This letter is to acknowledge receipt of your complaint by this office on March 3, 2006. Your complaint does not form the basis for any action by the United States Attorneys Office. Therefore, we are unable to assist you regarding this matter.

It is suggested that you direct any evidence of violations of federal law to the Federal Bureau of Investigation, U.S. Department of Justice, 219 South Dearborn, 9th Floor, Chicago, IL 60604 for any action it deems appropriate.

Very truly yours,

PATRICK J. FITZGERALD
United States Attorney

BY: /s/ Chrissy Stein
Chrissy Stein
Paralegal Specialist

How to Read Legal Citations

> [U]ltimately, the guarantee of [our] rights is no stronger than the integrity and fairness of the judge to whom the trial is entrusted.
>
> *Bracy v. Gramley*, 81 F.3d 684, 703 (7th Cir. 1996) (dissent), *reversed*, 520 U.S. 899, 117 S.Ct. 1793 (1997).

The name of the case cited above is *Bracy v. Gramley*. **81 F.3d 684, 703** simply means that this case was published in volume 81 of the Federal Reporters, 3rd series, starting on page 684. The second number, 703, simply refers to the page on which the passage quoted is found.

(7th Cir. 1996) **means that the case was appealed from a federal district court decision within the jurisdiction of the Seventh Circuit Court of Appeals in Chicago and decided in 1996. The states in the Seventh Circuit are Illinois, Indiana, and Wisconsin.**

In the Court of Appeals three judges on a panel decide the appeal. Two or more judges agreeing on the case are called the majority. In a citation "**dissent**" means the passage is from a dissenting opinion written by a judge on the panel who disagrees with the majority. If the citation includes "(en banc)," it means all judges in the circuit heard the case after it had been decided by a panel of three. One of the parties in the case can request such a hearing. The request can either be granted or denied.

Reversed means the U.S. Supreme Court overturned the Seventh Circuit's decision.

520 U.S. 899 means volume 520 of the United States Reports, page 899.

117 S.Ct. 1793 means volume 117 of the Supreme Court Reporter, page 1793.

Law journal articles are cited the same way.

Federal statutes are cited by United States Code and section (§) number. For example, 42 U.S.C. § 1983 means Title 42 of the United States Code, section 1983.

Federal Rules of Civil Procedure, which you find in Title 28 of the U.S. Code, are simply designated by number and, for example, cited as F. R. Civ. P. 52(a).

Federal Rules of Criminal Procedure, such as the F. R. Cr. P. 6(a) reference you find in the Kathrein petition, are found in Title 18 of the U.S. Code.

The U.S. Code is divided into fifty (50) titles, most of which do not concern us here. Two of the titles that do concern us are Title 18, Crimes and Criminal Procedure, and Title 28, Judiciary and Judicial Procedure. Other titles of the U.S. Code, such as those that apply to agriculture, Indians, and the military, do not concern us here.